

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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5 BOROUGH PAWN, LLC., RUBEN D. CABRERA,
REBECCA CABRERA and BRIAN CABRERA

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, COMMISSIONER OF POLICE
RAYMOND KELLY and SERGEANT RON MARTI

Defendants.

**ANSWER OF DEFENDANTS
CITY OF NEW YORK, NEW
YORK CITY POLICE
DEPARTMENT, RAYMOND
KELLY AND RON MARTI**

08 Civ 3837 (CMM)

JURY TRIAL DEMANDED

----- X
Defendants the City of New York ("City"), New York City Police Department, Commissioner of Police Raymond Kelly and Ron Marti by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to plaintiff's Complaint ("Complaint"), respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiffs purport to proceed as set forth therein.
2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiffs purport to invoke the jurisdiction of this Court as stated therein.
3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit that plaintiffs purport to proceed as set forth therein.
4. Deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiff purports to lay venue as stated therein.
5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the Complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the Complaint.

10. Deny the allegations set forth in paragraph “10” of the Complaint, except admit that the City of New York is a municipal corporation organized under the laws of the State of New York.

11. Deny the allegations set forth in paragraph “11” of the Complaint, except admit that the City of New York is a municipal corporation organized under the laws of the State of New York and that it maintains the New York City Police Department and respectfully refer the Court to the New York City Charter and Administrative Code for the relationship between defendant City and the New York City Police Department.

12. Admit the allegations in paragraph “12” of the Complaint.

13. Admit the allegations in paragraph “13” of the Complaint.

14. Admit that on January 23, 2008 police officers entered the premises of 5 Borough Pawn, otherwise deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Complaint.

15. Deny the allegations contained in paragraph “15” of the Complaint.

16. Deny the allegations contained in paragraph “16” of the Complaint.

17. Deny the allegations contained in paragraph “17” of the Complaint.

18. Deny the allegations contained in paragraph "18" of the Complaint.

19. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "19" of the Complaint.

20. Deny the allegations contained in paragraph "20" of the Complaint.

21. Deny the allegations contained in paragraph "21" of the Complaint.

22. Deny the allegations contained in paragraph "22" of the Complaint.

23. Deny the allegations contained in paragraph "23" of the Complaint.

24. Admit that plaintiff Cabrera was arrested, otherwise deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph "24" of the Complaint.

25. Deny the allegations contained in paragraph "25" of the Complaint.

26. Deny the allegations contained in paragraph "26" of the Complaint.

27. Deny the allegations contained in paragraph "27" of the Complaint.

28. Deny the allegations contained in paragraph "28" of the Complaint.

29. In response to the allegations set forth in paragraph "29" of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein, furthermore defendants deny the remaining allegations contained in paragraph "29."

30. Admit the allegations contained in paragraph "30" of the Complaint.

31. Deny the allegations contained in paragraph "31" of the Complaint.

32. Paragraph "32" contains legal conclusions to which no response is required.

33. Deny the allegations contained in paragraph "33" of the Complaint.

34. Deny the allegations contained in paragraph "34" of the Complaint.

35. Deny the allegations contained in paragraph “35” of the Complaint.

36. Deny the allegations contained in paragraph “36” of the Complaint.

37. Deny the allegations contained in paragraph “37” of the Complaint.

38. Deny the allegations contained in paragraph “38” of the Complaint.

39. Deny the allegations contained in paragraph “39” of the Complaint.

40. Deny the allegations contained in paragraph “40” of the Complaint.

41. Deny the allegations contained in paragraph “41” of the Complaint.

42. Deny the allegations contained in paragraph “42” of the Complaint.

43. In response to the allegations set forth in paragraph “43” of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein, furthermore defendants deny the remaining allegations contained in paragraph “43.”

44. Admit that plaintiff was arrested without a warrant and that he was subsequently detained, otherwise deny the remaining allegations contained in paragraph “44” of the Complaint.

45. Admit that plaintiff was arrested, otherwise deny knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph “45” of the Complaint.

46. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “46” of the Complaint.

47. Deny the allegations contained in paragraph “47” of the Complaint.

48. Deny the allegations contained in paragraph “48” of the Complaint.

49. Deny the allegations contained in paragraph “49” of the Complaint.

50. Deny the allegations contained in paragraph “50” of the Complaint.

51. Deny the allegations contained in paragraph "51" of the Complaint.

52. In response to the allegations set forth in paragraph "52" of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein, furthermore defendants deny the remaining allegations contained in paragraph "52."

53. Deny the allegations contained in paragraph "53" of the Complaint.

54. Deny the allegations contained in paragraph "54" of the Complaint.

55. Deny the allegations contained in paragraph "55" of the Complaint.

56. Deny the allegations contained in paragraph "56" of the Complaint.

57. Deny the allegations contained in paragraph "57" of the Complaint.

58. Deny the allegations contained in paragraph "58" of the Complaint.

59. Deny the allegations contained in paragraph "59" of the Complaint.

60. Deny the allegations contained in paragraph "60" of the Complaint.

61. Deny the allegations contained in paragraph "61" of the Complaint.

62. Deny the allegations contained in paragraph "62" of the Complaint.

63. Deny the allegations contained in paragraph "63" of the Complaint.

64. In response to the allegations set forth in paragraph "64" of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein, furthermore defendants deny the remaining allegations contained in paragraph "64."

65. Deny the allegations contained in paragraph "65" of the Complaint.

66. Deny the allegations contained in paragraph "66" of the Complaint.

67. Deny the allegations contained in paragraph "67" of the Complaint.

68. Deny the allegations contained in paragraph "68" of the Complaint.

69. Deny the allegations contained in paragraph “69” of the Complaint.

70. In response to the allegations set forth in paragraph “70” of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein, furthermore defendants deny the remaining allegations contained in paragraph “70.”

71. Deny the allegations contained in paragraph “71” of the Complaint.

72. Deny the allegations contained in paragraph “72” of the Complaint.

73. Deny the allegations contained in paragraph “73” of the Complaint.

74. Deny the allegations contained in paragraph “74” of the Complaint.

75. Deny the allegations contained in paragraph “75” of the Complaint.

76. Deny the allegations contained in paragraph “76” of the Complaint.

77. In response to the allegations set forth in paragraph “77” of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein, furthermore defendants deny the remaining allegations contained in paragraph “77.”

78. Paragraph “78” of the Complaint contains legal conclusions to which no response is necessary.

79. Deny the allegations contained in paragraph “79” of the Complaint.

80. Deny the allegations contained in paragraph “80” of the Complaint.

81. Deny the allegations contained in paragraph “81” of the Complaint.

82. Deny the allegations contained in paragraph “82” of the Complaint.

83. Deny the allegations contained in paragraph “83” of the Complaint.

84. Admit that plaintiffs propose to proceed as set forth in paragraph “84” of the Complaint, otherwise deny the allegations contained in paragraph “84” of the Complaint.

85. In response to the allegations set forth in paragraph “85” of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein, furthermore defendants deny the remaining allegations contained in paragraph “85.”

86. Paragraph “86” of the Complaint contains conclusions of law to which no response is required.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “87” of the Complaint.

88. Deny the allegations contained in paragraph “88” of the Complaint.

89. In response to the allegations set forth in paragraph “89” of the Complaint, defendants repeat and reallege each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein, furthermore defendants deny the remaining allegations contained in paragraph “89.”

90. Deny the allegations contained in paragraph “90” of the Complaint.

91. Deny the allegations contained in paragraph “91” of the Complaint.

92. Deny the allegations contained in paragraph “92” of the Complaint.

93. Deny the allegations contained in paragraph “93” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

94. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

95. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political

subdivision thereof, nor have the defendants violated any act of Congress for providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

96. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendants City of New York and New York City Police Department are entitled to governmental immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

97. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

98. There was probable cause for plaintiff's detention.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

99. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

100. Plaintiffs have failed to comply with all conditions precedent to suit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

101. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

102. At all times relevant to the acts alleged in the Complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

103. New York City Charter Chapter 18, Section 436 is constitutional.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

104. Punitive damages cannot be awarded against defendant City of New York.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

105. NYPD is a non-suable entity.

WHEREFORE, defendants City of New York, New York City Police Department, Police Commissioner Raymond Kelly and Sgt. Ron Marti request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 30, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
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(212) 788-0786

By: /s/
Michael K. Gertz

TO: Paul J. Solda, Esq. (By ECF)